IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 321 of 2007

ABDUL HAMID & ORS
V/S
ALLA BUX & ORS

Mr. DR BHANDARI, for the appellant / petitioner

Mr. SS BHATI & Mr. ARUN CHOUDHARY for Mr. RS SALUJA, for the respondent

Date of Order : 9.10.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the parties.

The learned lower Appellate Court has dismissed the appeal as time barred.

The necessary facts are that the learned trial court dismissed the suit vide order dt. 20.1.97, against that a revision was filed before this Court on 28.4.1997. Thereafter when the revision came up on 26.3.2003, the respondent objected about maintainability of the revision on the ground of remedy of appeal being available. Thereupon learned counsel for the petitioner sought to withdraw the revision with liberty to pursue the legal remedies available to him under law, and the revision was allowed to be withdrawn with the said liberty. Thereafter the appeal has been filed on 30.4.2003. The learned lower Appellate Court has dismissed the appeal observing that the

limitation once starts running does not stop, and no case is made out for condoning the delay in filing the appeal.

It is contended before me that the appeal was filed within 9 days after obtaining certified copy of the order of this Court dt. 26.3.2003, on 30.4.2003, therefore, the appeal could not be dismissed as time barred.

In my view, the contention cannot be accepted, inasmuch as, the limitation for appeal before the learned lower Appellate Court did remain 30 days from the date of the order of the learned trial court. The filing of revision was wholly misconceived remedy, and even if any benefit is extended to the appellant even though not entitled, even that benefit could not be extended for any period beyond the time during which the revision remained pending before this Court which is from 28.4.97 to 26.3.2003.

In such circumstances, I do not find any error in the impugned order dismissing the appeal as time barred. The second appeal is, therefore, dismissed summarily.

(N P GUPTA),J.

/Sushil/